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# BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/491,899 Filing Date: January 27, 2000 Appellant(s): WELLS ET AL.

**MAILED** 

FEB 0 6 2008

**Technology Center 2100** 

George H. Gerstman For Appellants

**EXAMINER'S ANSWER** 

This is in response to the appeal brief filed 26-October-2007 appealing from the Office action mailed 11-January-2007.

## (1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

## (2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## (3) Status of Claims

The statement of the status of claims contained in the brief is correct.

#### (4) Status of Amendments After Final

The appellants' statement of the status of amendments after final rejection contained in the brief is correct.

#### (5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

### (6) Grounds of Rejection to be Reviewed on Appeal

The appellants' statement of the grounds of rejection to be reviewed on appeal is correct.

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#### (7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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#### (8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

#### (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

### Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 6, 8, 12-13, 24, 26, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Orus et al</u> (U.S. Publication No. 2004/0035926 A1, hereinafter referred to as <u>Orus</u>) in view of <u>Soltesz et al</u> (U.S. Publication No. 2001/0011680 A1, hereinafter referred to as <u>Soltesz</u>.)

As to claim 1, <u>Orus</u> teaches a gaming apparatus to be played by a player (see elements 200, 200' and 200" in figure 1 and see paragraphs 1, 5, 8, 12, and 24, where "gaming apparatus" is read on "gambling machine", and "player" is read on "gambler"), comprising:

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a portable smart card carried by the player (see paragraphs 2, 5 and 30-31, where a smart card" is read on a "chip card"); storing financial account information for the player (see paragraphs 12, 14, 18, 46, 53, and 77-78, where "financial information" is read on "balance"); said biometric smart card carried by the player separate from the gaming apparatus (see paragraph 49, where "player" is read on "gambler", and the fact that the gambler "hands his gambling card to the operator" indicates that the player/gambler carries the card with him, separately from [not attached to] the gaming apparatus);

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a gaming terminal (see element 200 in figure 1 and see "gambling machine" in paragraph 24), configured for playing at least a first game (see paragraphs 57 and 76, where "playing a game" is read on "placing bets");

a reader, coupled to the gaming terminal (see card reader 210 coupled to gambling machine 200 in figure 1 and see paragraphs 5 and 26) which receives data stored on said smart card (see paragraphs 14 and 56, where "receiving data" is read on "reading data"); and a comparator for comparing data (see paragraphs 63 and 91) and if there is a match, outputting an authorization allowing the player to use a cash balance on the smart card to play the gaming apparatus (see "gambling operation is authorized" in paragraph 63.)

## Orus does not teach:

- a biometric smart card storing biometric data for the player;
- a reader which receives biometric data stored on said smart card;
- a biometric measurement device for measuring biometric data of a user to provide measured biometric data; and

a comparator for comparing said measured biometric data to the biometric data stored on said smart card and if there is a match, outputting an authorization allowing the player to access his or her account.

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<u>Soltesz</u> teaches a biometric enabled self-service kiosk (see paragraphs 3-4 and 10), in which he teaches:

a biometric smart card storing biometric data for the player (see paragraphs 4, 13 and 19, where "smart card" is read on "optical/memory card");

a reader which receives biometric data stored on said smart card (see element 2 in figure 1, and see paragraphs 28 and 30-31);

a biometric measurement device for measuring biometric data of a user (see element 3 in figure 1, and see paragraph 14, where biometric measurement device" is read on "biometric input/reader device") to provide measured biometric data (see paragraphs 13 and 31-32); and a comparator (see paragraph 29) for comparing said measured biometric data to the biometric data stored on said smart card (see paragraphs 14, 29, 31 and 38) and if there is a match, outputting an authorization allowing the player to access his or her account (see paragraph 14, where "accessing the account" is read on "authorizing a transaction"; and see paragraphs 29, 31, and 38.)

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified <u>Orus</u> by the teachings of <u>Soltesz</u>, because "a biometric smart card storing biometric data for the player; the gaming machine to be coupled to a card reader for receiving the user's biometric data stored on the smart card; a biometric reader to capture a user's biometric data; and a comparator to allow the game to be played",

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would provide both convenience and security for the player to use his smart card to play different games at different gaming machines (e.g., in a casino) using the same card and same account cash/token balance on the card. This enables the player to walk around in the casino cash-free without risking losing his cash or having to carry lots of coins around. Storing user's biometric data (e.g., fingerprint) on the user's card would prevent unauthorized use of the card should the card be stolen or lost and recovered by another player. When a player inserts a card into a gaming machine, he/she would also provide his/her biometric data (e.g., fingerprint) to the machine in real-time, which would then be compared with the biometric data stored on the card to verify that the game card is being used by the authorized user, therefore, preventing fraudulent transactions. In general, Soltesz solves the "prior art problems" of storing biometric information in databases and onsite, as opposed to storing them on portable devices such as smart cards, which he lists as follows: "The principal problem with the use of biometrics to verify cardholders in this context is the problem of communicating the biometrics information to the database, and communicating the results back to the site of the transaction. Storage of biometrics information on site is generally impractical, and is certainly inefficient when the card can be used with different kiosks, each of which would be required to store the necessary information. As a result, the use of biometrics information is limited to transaction devices which are networked or equipped to communicate with a remote database. This limits the range of applicability of biometrics verification to use in connection with existing networks and locations with appropriate infrastructure, thereby excluding much of the world, and also limits the speed at which transactions can be conducted (paragraph 9)." The combination of the gaming apparatus of

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Orus with the teachings of Soltesz would enable the gaming devices/terminals of Orus to function similar to the portable kiosks of Soltesz and provide the gaming convenience and security (as mentioned above) to game players.

As to claim 6, Orus as modified, teaches wherein:

said biometric measurement device is selected from among a thumb print scanner; a fingerprint scanner; a retina scanner; an iris scanner; an ear scanner; a voice data sensor; a facial scanner; or an infrared scanner (see "biometric reader device" in Soltesz, paragraphs 14 and 19; "image capture device" in paragraph 19; "biometric input device" in paragraphs 16, 21, and 28; and see "fingerprint reader" in paragraphs 31 and 44.)

As to claim 8, Orus teaches a gaming method (see paragraphs 2-3) for a gaming apparatus to be played by a player (see elements 200, 200' and 200" in figure 1 and see paragraphs 1, 5, 8, 12, and 24, where "gaming apparatus" is read on "gambling machine", and "player" is read on "gambler"), comprising:

storing first data for a player (see paragraphs 12, 14, 16) in a portable smart card carried by the player (see paragraphs 2, 5 and 30-31, where a smart card" is read on a "chip card"), which smart card is carried by the player separate from the gaming apparatus (see paragraph 49, where "player" is read on "gambler", and the fact that the gambler "hands his gambling card to the operator" indicates that the player/gambler carries the card with him, separately from [not attached to] the gaming apparatus), storing financial account information for the player in said smart card (see paragraphs 12, 14, 18, 46, 53, and 77-78, where "financial

information" is read on "balance"), and also storing personal preference data for said player in said smart card (see paragraphs 12 and 18, where "personal preference data" is read on "card balance"; and read on "information on the gambler");

providing a gaming terminal (see element 200 in figure 1 and see "gambling machine" in paragraph 24);

coupling a reader to said gaming terminal (see card reader 210 coupled to gambling machine 200 in figure 1 and see paragraphs 5 and 26), configured for playing at least a first game (see paragraphs 57 and 76, where "playing a game" is read on "placing bets"), wherein said reader receives said first data stored on said smart card (see paragraphs 14 and 56, where "receiving data" is read on "reading data"); and

comparing said data to said data stored on said smart card (see paragraphs 63 and 91); and if there is a match, outputting an authorization allowing the player to use a cash balance on the smart card to play the gaming apparatus (see paragraph 18; and see "gambling operation is authorized" in paragraph 63.)

#### Orus does not teach:

storing first biometric data for a player in a portable biometric smart card;

measuring biometric data of said player to provide measured biometric data; and
comparing said measured biometric data to said biometric data stored on said smart card
and if there is a match, outputting an authorization allowing the player to access his or her
account.

<u>Soltesz</u> teaches a biometric enabled self-service kiosk (see paragraphs 3-4 and 10), in which he teaches the above.

For the above teachings, the Appellants are directed t the remarks and discussions made in claim 1 above, in view of the teachings provided by **Soltesz**.

As to claim 12, Orus as modified, teaches wherein:

said smart card further stores the current account balance for an account established for said first user (see **Orus**, paragraphs 12, 46 and 53.)

As to claims 13 and 26, **Orus** as modified, teaches wherein:

said step of measuring includes a step selected from among: scanning a thumb print; scanning a fingerprint; scanning a retina; scanning an iris; scanning an ear; sensing voice data; or scanning a face (see "obtaining biometric data" in **Soltesz**, paragraphs 14 and 19; see "obtaining biometric data" from an "image capture device" in paragraph 19; and see "fingerprint reader" in paragraphs 31 and 44.)

As to claim 24, <u>Orus</u> teaches a gaming method (see paragraphs 2-3) for a gaming apparatus to be played by a player (see elements 200, 200' and 200" in figure 1 and see paragraphs 1, 5, 8, 12, and 24, where "gaming apparatus" is read on "gambling machine", and "player" is read on "gambler"), comprising:

storing first data for a player (see paragraphs 12, 14, 16) in a portable smart card carried by the player (see paragraphs 2, 5 and 30-31, where a smart card" is read on a "chip card"), which smart card is carried by the player separate from the gaming apparatus (see paragraph 49, where "player" is read on "gambler", and the fact that the gambler "hands his gambling

card to the operator" indicates that the player/gambler carries the card with him, separately from [not attached to] the gaming apparatus) wherein said smart card also stores personal preference data for said player (see paragraphs 12 and 18, where "personal preference data" is read on "card balance"; and read on "information on the gambler");

providing a gaming terminal (see element 200 in figure 1 and see "gambling machine" in paragraph 24);

coupling a reader to said gaming terminal (see card reader 210 coupled to gambling machine 200 in figure 1 and see paragraphs 5 and 26), configured for playing at least a first game (see paragraphs 57 and 76, where "playing a game" is read on "placing bets"), and reading said data stored on said card (see paragraphs 14 and 56, where "receiving data" is read on "reading data"); and

comparing said data to said data stored on said smart card (see paragraphs 63 and 91); and if there is a match, outputting an authorization allowing the player to use a cash balance on the smart card to play the gaming apparatus (see paragraph 18; and see "gambling operation is authorized" in paragraph 63);

reading from the same smart card a current account balance for an account established for said player (see paragraphs 27, 50 and 63); and

debiting an amount from said current account balance on said smart card as a fee for playing said game (see paragraphs 3, 14, 18 and 53), and establishing a new current account balance on said smart card (see paragraphs 27, 58, and 90.)

#### Orus does not teach:

storing first biometric data for a player in a portable biometric smart card;

measuring biometric data of said player to provide measured biometric data; and comparing said measured biometric data to said biometric data stored on said smart card and if there is a match, outputting an authorization allowing the player to access his or her account.

<u>Soltesz</u> teaches a biometric enabled self-service kiosk (see paragraphs 3-4 and 10), in which he teaches the above.

For the above teachings, the Appellants are directed t the remarks and discussions made in claim 1 above, in view of the teachings provided by **Soltesz**.

As to claim 28, <u>Orus</u> as modified, teaches in which the player's winnings from play of said gaming apparatus are credited to said current account balance (see <u>Orus</u>, paragraphs 2-3, 14, 18, 27, 46, 57 and 76.)

As to claim 29, <u>Orus</u> as modified, teaches in which said smart card includes a microprocessor (see <u>Orus</u>, paragraphs 31, 33 and 68) and in which said smart card further stores a current account balance for an account established by said first user (see <u>Orus</u>, paragraphs 12, 46 and 53), in which the user's winnings from play of said gaming apparatus are credited to said current account balance (see <u>Orus</u>, paragraphs 2-3, 14, 18, 27, 46, 57 and 76.)

Claims 2-3, 5, 9-10, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over
 Orus in view of Soltesz, as applied to claims 1, 8 and 24 above, and further in view of
 Thompson (U.S. Patent No. 5,865,470.)

As to claims 2 and 9, <u>Orus</u> as modified, still does not *explicitly* teach wherein said smart card has a thickness of less than about 0.05 inch (Appellants are directed to paragraphs 4 and 6-7 of this Office Action, in view of the objection and rejections made to these claims regarding "new matter".)

Nonetheless, <u>Thompson</u> teaches a peel-off coupon redemption card with microprocessor chip [smart card] (see figures 38-39 and see column 12, lines 51-64), in which he teaches the smart card has a thickness of less than about 0.05 inch (see column 4, line 44 through column 5, line 3.)

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified **Orus** as modified, by the teachings of **Thompson**, because using smart cards which have a thickness of less than about 0.05 inch, would enable the system's game cards to possibly also be used in other card readers (e.g., ATM machines or vending machines) to purchase snacks and/or obtain cash using the same gaming card on the premises, which would offer an additional convenience to the game player (at a casino, for example.) According to **Thompson**, "[c]onventional plastic credit cards are 0.021 to 0.027 inches in thickness. This is a standard thickness so that the plastic credit cards can be used in a machine that accepts plastic credit cards. All machines are designed to accept only this range of thicknesses for a plastic credit card" (column 4, lines 44-49.)

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As to claims 3 and 10, <u>Orus</u> as modified, teaches wherein: said smart card includes a microprocessor (see <u>Orus</u>, paragraphs 31, 33 and 68.)

As to claim 5, Orus as modified, teaches wherein:

said smart card further stores the current account balance for an account established for said first user (see **Orus**, paragraphs 12, 46 and 53.)

As to claim 27, <u>Orus</u> as modified, teaches in which the player's winnings from play of said gaming apparatus are credited to said current account balance (see <u>Orus</u>, paragraphs 2-3, 14, 18, 27, 46, 57 and 76.)

4. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Orus</u> in view of <u>Soltesz</u>, as applied to claims 1, 8 and 24 above, and further in view of <u>Nakata et al</u> (U.S. Patent No. 5,736,727, hereinafter referred to as **Nakata**.)

As to claim 25, <u>Orus</u> as modified, still does not *explicitly* teach wherein said smart card has a thickness of less than about one quarter inch (Appellants are directed to paragraphs 4 and 6-7 of this Office Action, in view of the objection and rejections made to these claims regarding "new matter".)

Nonetheless, <u>Nakata</u> teaches an IC communication card apparatus (see figure 1 and see column 2, lines 31-48), in which he teaches wherein said smart card has a thickness of less

than about one quarter inch (see figures 7 and 8 and see column 4, lines 18-41, where "smart card" is read on "IC card" and "PC card", and where the "card thickness of about 5 mm (millimeters)" translates to a thickness of about one fifth of an inch, which is less than about one quarter of an inch.)

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified **Orus** as modified, by the teaching of **Nakata**, because having a smart card with a thickness of about 5mm (or one quarter inch) would enable the system to provide game players with a smart/IC card such as a PCMCIA card (or a customized smart card of the same thickness), which would not only provide additional security and/or functionality to the gaming machines/devices, but also due to the thickness of the card, misuse of the card would be prevented since the thickness of about one quarter inch is greater (thicker) than conventional/standard credit or debit cards, therefore, these cards cannot be used in ATM machines or in conventional credit/debit card authorization terminals, which would in turn, prevent fraudulent attempts by an unauthorized user, should the card be lost or stolen.

#### (10) Response to Argument

Appellants' arguments presented in the Appeal Brief filed on 26-October-2007 have been fully considered but are not deemed persuasive:

Appellants argue that, "there is no teaching in Soltesz of the use of its system with gaming machines. Rather, it is used only for machines where an exact, expected service or product is provided to the user."

The Examiner respectfully disagrees with the Appellants' argument.

First, there is nothing in Soltesz that indicates the invention cannot be used in gaming machines. Second, in the Field of Invention, Soltesz states, "[t]he kiosk of the invention is especially suitable for use as an Automated Teller Machine (ATM), although the invention may be used for other types of transactions such as airline ticketing, drivers license renewals, vending, Internet or telephone system access, and so forth, with on-site verification and/or authentication of the user being carried out in real time using biometrics such as fingerprint or voice analysis." In the above passage, the "on-site verification and/or authentication of the user being carried out in real time using biometrics such as finger print or voice analysis" is exactly what the instant Application uses to allow the user to play games using the teachings of the cited reference. Third, as for the "exact, expected service or product provided to the user," the outcome of the gaming service is not unknown. It can either result in the player's winning or losing which are both known outcomes. In the case that the player wins a game, the winnings will be credited to the user's account/card and in the case of losing, the loss will be debited from the user's account/card.

The Appellants argue that, "[t]here is no suggestion of using the Soltesz et al. system with gaming machines where the outcome may be uncontrolled: i.e. winning, or losing so that nothing is provided to the player, or a variable award."

The Examiner respectfully disagrees.

The Examiner relies on the Soltesz reference for the teaching of the usage of the biometric information stored on a user's card to interact with the gaming machines. The gaming

apparatus of the primary reference, <u>Orus</u> provides the establishing of the outcome of the game, whether winnings, losses, or variable award as detailed in the rejection of the claims of the instant Application.

Appellants further argue that, "Soltesz et al. makes no mention of use of his system in the gaming apparatus area" and that, "it would not have been obvious to seek an additional source of security protection, completely different from anything suggested in Orus et al., except as a result of hindsight based on Appellant's own disclosure.

The Examiner respectfully disagrees.

First, with respect to the use of the teachings of <u>Soltesz</u> in a gaming environment, as addressed above, the <u>Soltesz</u> reference does not in any way limit his invention for use in any particular environments. Clearly, there is nothing in <u>Soltesz</u> that excludes or prevents the gaming industry from using the teachings of his invention. As stated above, <u>Soltesz</u> teaches using his invention "for other types of transactions such as airline ticketing, drivers license renewals, vending, Internet or telephone system access, <u>and so forth</u>, with on-site verification and/or authentication of the user being carried out in real time using biometrics such as fingerprint or voice analysis."

Further, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The Appellants further argue that, "[t]here is no hint in either of the two references that there would be a desirability to combine the two systems in a manner not specified by either Orus et al. or Soltesz et a;., to come up with the system and method claimed in the present application."

The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the primary reference, **Orus** includes all the teachings of a gaming apparatus, satisfying the gaming elements and limitations recited in the claims of the instant Application, and the Soltesz reference fully satisfies all the claimed limitations relating to the storage of the user's biometric information on a smart card, a reader for receiving/reading the user's biometric, a biometric measurement, and a comparator for comparing the user's biometrics with the biometric information stored in the user's card, and authorizing the user to use the card based on the authentication/identification of the user as a result of the biometric information resulting in a match. Therefore, the Examiner maintains that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the Orus invention by the teachings of the Soltesz reference to achieve the automation of the gaming service to offer the player the added security and convenience of using smart cards in a gaming environment.

The Appellants further argue that, "Orus et al. in paragraph 0018 calls for a central processing unit that"... has a database that in parallel stores the data representing gaming operations carried out, particularly card identification data an data representing the balances of value units debited and or credited...". The Appellants add, "[t]his parallel storing of card identification data teaches away from the concept of Soltesz et a. in which the biometric card identification data is not stored in the kiosk, but rather is only stored on the card. Thus, those skilled in the art would be led away from combining the references. Thus it is submitted that the claims in question are patentable over Orus et al. in view of Soltesz et al."

The Examiner most respectfully but quite strongly disagrees with the above arguments.

In the Examiners view, not only the "parallel storage of card identification data" taught by <u>Soltesz</u> does <u>not</u> teach away from the combination of the two references, but it also provides an additional and beneficial function to the usage of smart card systems in the gaming environment. This "parallel storage of card identification data" provides additional security to the gaming establishment and the player if a player ever loses or misplaces his smart card (or if the gaming smart card is ever stolen). In such event, the gaming establishment has a backup of the user data and card identification data in a central processing unit, which can be used to identify the authorized user and verify the last card balance in order to issue the player a replacement card.

Further, <u>Soltesz</u> teaches, in paragraph 21 of his invention, that "[a]ccording to variations of the second preferred embodiment of the invention, the self-service kiosk includes, in addition to a biometrics input device and optical card read/write unit, a display screen, <u>a microprocessor</u>

application programs." The above indicates that <u>Soltesz</u> also teaches the means for a "parallel storage" of information, using the microprocessor and the hard disk drive. It is obvious that if desired, one of such "application programs" could be used to store the card identification data in the provided storage within the kiosk. Hence, the Examiner maintains that <u>Soltesz</u> does not teach away from the "parallel storing of information" taught by <u>Orus.</u>

The Appellants further argue that, "claims 8 and 24 include the step of storing personal preference data for the player in the smart card", and that according to the specification of the instant Application, "the preference information may be 'indications of types of games, drinks, entertainment and the like preferred, food, smoking/non-smoking preferences, preferred machine denominations and the like'." The Appellants further contend that, "[n]either the Orus et al. patent or the Soltesz et al. patent disclose this limitation."

The Examiner respectfully disagrees.

Orus teaches, in paragraph 0012 of his invention, "storing information corresponding to that stored in the gambling cards such as information on the gambler, card identification data, and data on the stored value balance in the card." The Examiner interprets the stored "information on the gambler" to be inclusive of any player personal preference data/information.

To that extent, in paragraph 0049 of his invention, <u>Orus</u> teaches, "credit amount <u>the</u> <u>gambler desires</u>", and that, "this amount is transferred to transcriber 110 which then <u>records on</u> <u>chip card CJI</u> the significant information corresponding to the credit <u>desired by the gambler</u>."

In this paragraph, the Examiner interprets the recording of the "gambler's <u>desired</u> amount" on the chip card, to read on the "player's personal preference data being stored in the smart card."

Additionally, in paragraph 0054 of his invention, <u>Orus</u> teaches, "[i]n addition, the database or <u>memory of gambling cards</u> CJ may also <u>contain information on the gambler</u>, for example his age, <u>gambling habits for gambler loyalty applications</u>, awarding free games, etc."

In this paragraph, "gambling habits for gambler loyalty programs" is interpreted by the Examiner to read on "player personal preference data."

Appellants argue that "claims 2-3, 5, 9-10 and 27 are claims that are dependent upon claims that are submitted to be allowable in view of the arguments above. As such they also are patentable because of such dependency." Appellants also argue that, "claim 25 shares in the limitations of claim 24 which is submitted to be patentable on the basis of the arguments above, and thus also is patentable."

The Examiner respectfully disagrees and directs the Appellants' attention to the remarks and discussions provided above in view of the arguments made against the independent claims of the instant Application.

### (11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tony Mahmoudi/

Tony Mahmoudi Primary Patent Examiner AU 2165

Appeal Conference held on Wednesday, 28-November-2007, at 1:30 pm EST.

Agreement was reached to proceed to the Board of Appeals and Interferences.

Conferees:

Christian Chace

John R. Cottingham